

From: rurich@tway.net@inetgw
To: Microsoft ATR
Date: 1/27/02 8:37pm
Subject: Microsoft Settlement

After review of the Proposed Final Judgment in the United States vs. Microsoft Corporation case, I find the proposed remedy to be insufficient to serve the public interest. The remedy fails to fulfill two of the three goals an appropriate solution should provide. This Proposed Final Judgment fails to prevent future antitrust violations by Microsoft, and fails to undo the consequences suffered from Microsoft's violations. I also believe the Proposed Final Judgment extends too much protection to Microsoft's monopoly of operating systems. Relevant chapter, section, subsection information will be enclosed in parenthesis where it is believed appropriate and beneficial.

Instead of preventing future violations, the Proposed Final Judgment seems to protect Microsoft from new threats. My main concerns are the limitations as described below:

(III.C.3) Limiting automatic launching of middleware to only "similar functionality" that Microsoft already delivers prevents new functionalities from being introduced. This section seems to guarantee Microsoft the right to decide what types of middleware may automatically run.

(III.D) By limiting the released APIs to only those Microsoft has already used in middleware, Microsoft is protected from middleware using new features Microsoft has not yet applied to middleware products. Essentially this guarantees Microsoft the first chance to use an API feature, and further the right to prevent some API features from becoming available to middleware products that might use those features in a way that could threaten Microsoft's operating system monopoly.

(III.H exception 1) This exception states Microsoft may invoke Microsoft middleware to interoperate with a server maintained by Microsoft. Microsoft's .net initiative seems to plan for the increased use of servers maintained by Microsoft for many activities. By allowing this exception, it may serve to allow Microsoft to invoke their middleware on an increasingly frequent basis, at least in part eliminating the ability for non-Microsoft middleware to effectively compete. Through this exception, Microsoft could also illegally maintain the Windows operating system monopoly, and even create new monopolies, by placing critical components of Windows onto servers maintained by Microsoft.

(III.H exception 2) This exception provides Microsoft the opportunity to override a non-Microsoft middleware product with a Microsoft one should the non-Microsoft middleware fail to implement a feature the Microsoft middleware implements. This seems to suggest Microsoft may be given the right to make sure a Microsoft interest will always function, which seems likely to allow further abuses of the Microsoft Windows monopoly.

The Proposed Final Judgment fails to undo the consequences of

Microsoft's illegal anticompetitive behaviors. If Microsoft had not illegally maintained the high application barrier to entry, many things would certainly be available to a much broader range of operating systems, yet I can find no actions taken to undo these damages Microsoft inflicted. Further, Microsoft is actually rewarded for the antitrust violations they have been found guilty of.

Due to Microsoft's maintenance of the applications barrier to entry, a large amount of additional power and influence was gained by Microsoft. This gained power likely led to many new proprietary standards released by Microsoft having unnaturally high acceptance, rather than alternative standards being created that would not be under the control of Microsoft. Examples of standards released by Microsoft (not necessarily affected by Microsoft's antitrust violations) include, but are not limited to, Windows-Media Formats, Active Server Pages, and DirectX. It is essential to ensure functionality provided by Microsoft standards that would have been fulfilled by non-Microsoft standards had Microsoft not broken antitrust laws be available in a similar fashion to how the non-Microsoft standards would. Further, Microsoft should not be allowed to profit from such standards more than they would have had Microsoft not violated antitrust laws.

In regards to the rewards Microsoft will receive under the Proposed Final Judgment, (III.I) allows Microsoft to license (in addition to their legal intellectual property) the intellectual property that illegally gained value through Microsoft's anticompetitive behaviors. This results in Microsoft being provided with new revenue streams as a result of their illegal actions. This sets a bad precedent by allowing a company to violate antitrust laws, and then establish permanent revenue streams from those same violations.

I have another fairly minor concern about the definition under (VI.J) of "Microsoft Middleware", which states a major version is described as one with either a new name or a new whole number or number directly to the right of the decimal point. If Microsoft were to change their versioning system, it seems this could become ineffective. It also seems this may cause Microsoft to change their view of when a new version is worth the trouble of labeling with a new whole number or number directly to the right of the decimal point.

Overall, the Proposed Final Judgment seems to be lacking on many critical points, and provides no way to introduce future revisions should they be necessary to correct the oversights of the Proposed Final Judgment.

Richard Urich
rurich@tway.net
1146 Pointe Newport terr 208

Casselberry, FL 32707
(407) 493 - 7906